IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 17115 of 2007(K)

OS.7/2003 of SUB COURT, PATHANAMTHITTA

.....

PETITIONER:

THIRUVALLA CO-OPERATIVE HOUSING
CONSTRUCTION SOCIETY, THIRUVALLA,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.P.VINODKUMAR

RESPONDENTS:

---

1. A.K.CHAKRAPANI,
AMBALAPARAMBIL HOUSE, ANJILITHANAM P.O.,
KUNNAMTHANAM, MALLAPPALLY, PATHANAMTHITTA.

2. T.A.SALEENA BEGAM,
SHIFA MANZIL, VALLANA MURI, KIDANGOOR,
KOZHENCHERRY, PATHANAMTHITTA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 17115 OF 2007

= = = = = = = = = = = = = = =

Dated this the 5th day of June, 2007.

J U D G M E N T

The claim petitioner in E.A.397/06 is the writ petitioner before this Court and he has requested this Court to set aside Ext. P2 order. Ext.P1, a claim petition filed by the writ petitioner on the ground that there is a decree against the judgment debtor in O.S.7/03 and it is a decree with charge on the property and therefore the claim petitioner has got the first charge for realisation of the amount due under the Arbitration decree.

The decree holder in O.S.7/03 appeared and submitted that he has no objection in allowing the petition. The execution Court passed an order to the effect that out of the sale proceeds an amount of Rs.4,76,166/- due to the claim petitioner can be given and the balance amount need to be given to the decree holder. A perusal of Ext.P1 application would reveal that the said amount is the amount due as on 7.10.05 whereas the claim petitioner is entitled to get interest and other amount due under the arbitration decree. This has been lost sight off by the executing Court while passing the order in the execution application. So, in

order to correct the same he has filed Ext.P3 application and therefore in the interest of justice a direction has to be given to the Sub Judge, Pathanamthitta to hear and dispose of Ext.P3 after affording opportunity of being heard to all the parties concerned. Till that time, the further proceedings in E.P.8/05 shall remain stayed.

M.N. KRISHNAN, JUDGE.

ul/-